IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RFA No.75/2002 with RFAs No. 76 & 77 of 2002

Date of Decision :August 22, 2007.

RFA 75/2002

H.P.S.E.B. & another …Appellants.

v.

Barkat Ali and others. …Respondents.

RFA 76/2002

H.P.S.E.B. & another …Appellants.

v.

Roshan Lal and others. …Respondents.

RFA 77/2002

H.P.S.E.B. & another …Appellants.

v.

Ganga Ram and another. …Respondents.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, J.

Whether approved for reporting?[1] *No*

RFA 75/2002

For the Appellants. Mr. Vikram Thakur, Advocate vice Mr. Shrawan Dogra, Advocate.

For Respondents No 1 to 3. Mr. Sunil Mohan Goel, Advocate.

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[1] *Whether the reporters of the Local Newspapers may be allowed to see the Judgment? No*

For Respondent No.4. Mr. Ashok Chaudhary, Addl. Advocate General.

RFA 76/2002

For the Appellants. Mr. Vikram Thakur, Advocate vice Mr. Shrawan Dogra, Advocate.

For Respondents No 1 to 4. Mr. Sunil Mohan Goel, Advocate.

For Respondent No.5. Mr. Ashok Chaudhary Addl. Advocate General.

RFA 77/2002

For the Appellants. Mr. Vikram Thakur, Advocate vice Mr. Shrawan Dogra, Advocate.

For Respondents No 1. Mr. Sunil Mohan Goel, Advocate.

For Respondent No.2. Mr. Ashok Chaudhary Addl. Advocate General.

Sanjay Karol, J(Oral).

All the aforesaid appeals arise out of common award dated 20.3.2001, passed by the District Judge, Kullu, H.P,. and therefore, are being disposed of by a common order.

For the public purpose, namely, construction of 132 KV transmission line, Bajaura, District Kullu, on 24th July, 1992 appellants herein got published a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '**the Act'**), intending to acquire the following lands of the respondents:-

Khasra No.	**Area**	**Classification**
626/580/1 781/590/1 606/1 606/2	0-05-10 0-05-00 0-04-01 0-06-01	Barani Doem Barani Soem Bathal Doem Bathal Doem
Total Land :	1-00-12	

In terms of the common award No. 145, dated 30.12.1995, the Collector, Land Acquisition assessed the market value of the compensation payable to the respondents as under:-

Ropa Abal	:	At the rate of Rs.23,330/- per bigha.
Ropa Doem	:	At the rate of Rs.16,526/- per bigha.
Bathal Abal	:	At the rate of Rs.13,366/- per bigha.
Bathal Doem	:	At the rate of Rs.9,864/- per bigha.
Bathal Soem	:	At the rate of Rs.6,804/- per bigha.

Feeling aggrieved and dissatisfied, the appellants preferred a petition under Section 18 of the Act.

In the proceedings the claimants examined S/Shri Barkat Ali (PW-1) and Sh.Mohamd Ali (PW-2) and got proved the copy of the sale deed Ext.PW-2/A and copy of jamabandi Ext.PW-2/B. Respondents examined S/Shri Tule Ram (RW-1), Chet Ram (RW-2), Chattar Das (RW-3), Jiwan Ram (RW-4) and got sale deeds Exts.RW-1/A, RW-3/A & RX. The copy of award passed by the Collector in land reference case No. 145 was also exhibited as RW-1/A.

After considering the statements of the parties and the material on record, the Court below making Ext.PW-2/A as the basis came to the conclusion that the market value of the acquired land was Rs.2,40,000/- per bigha and accordingly enhanced the same from the amount already awarded by the Collector in terms of this award. Learned counsel for the appellants has assailed the impugned award on the ground that the learned Judge has failed to exercise the jurisdiction vested in him by not considering the copy of

the sale deeds Exts. RW-1/A, RW-3/A as also the copy of sale deed Ext. RX on the ground that the vendor and vendee were not examined. According to him, the said document ought to have been looked into to determine the fair market value of the acquired land.

It is a settled law that for the acquisition of the land, the land owner is entitled to receive compensation as per market value, as it existed at the time of publication of Notification under Section 4 of the Act and as such market value has to be determined on the basis of the price which the parties are ready to sell and purchase the land.

Respondent-claimant Mohammad Ali (PW-1) has relied upon the sale deed dated 31.1.1992 whereby two biswas of land was sold for Rs.40,000/- in Phati Bajaura. He has proved that the acquired land is just at a distance of 200 yards from the land under sale transaction and the fertility and utility of both the lands is same. It has got a potential for development into a commercial area.

The defendants' witnesses S/Shi Tule Ram (RW-1), Chet Ram (RW-2) and Chattar Dass (RW-3) have proved sale instances of land, but however, the same cannot be considered, as according to the said witnesses the transacted land was given by the father to the son for construction of a house and was without consideration and the price was mentioned only for the purpose of registration. In my view, these sale instances brought on record by the appellants were thus rightly rejected by the Court below. The fourth sale transaction, i.e. Ext. RX was

not considered by the Court, as the vendor and the vendee were not examined. With the change in the position of law, the same can be looked into but, however, perusal of the same would show that the same pertains to a totally different village and is at a far away place. There is nothing on record to show the similarity in the nature, location and category of the acquired land and the land covered under the said sale transaction. During the course of hearing, it was stated at the Bar by the learned counsel for the respondents that the said village is at a distance of 15 Kms from the acquired land. The said fact is undisputed and is also clearly borne out from the record. Therefore, on a careful examination, the same cannot be relied upon, looked into and considered for determining the fair market value of the land in the area.

Since the sale on record proved by the respondents is of the same village and there is similarity with regard to the location, category and classification of land as also its potential for growth is duly proved, in my view, it would be a good guidance for assessing the market value of the acquired land. The land in question is not a big chunk of land so as not to be compared with the sale instances already proved on record. The acquired land in all the three cases is just about 1-00-12 Hects. and the sale instance proved on record is just at a distance of 200 yards, which is 0-2-00 bighas. The sale transaction is of the year 1992 and the acquisition is of the year 1992.

While making the said sale transaction as basis, the Court below has come to a finding that a deduction of 40% towards developmental charges be also made while determining the fair market value and, therefore, arrived to a figure of Rs.2,40,000/- per bigha and awarded the same accordingly. Since the respondents have not filed any appeal, I am not going into the question as to whether the same, in the facts of the case, could be deducted or not. In my view, the Court below, relying upon the sale instance proved by Mohammad Ali (PW-1) has rightly looked into and relied upon the same for the purposes of assessing the fair market value of the acquired land.

I have gone through the record. There is no evidence to the contrary. In fact the respondents have been able to sufficiently prove the fair market value of the land, which has been acquired. It has also come on record that the acquired land has great potential of growth and was having high commercial value as the same is in close proximity of the market place.

Respondents S/Shri Barkat Ali (PW-1) and Mohammad Ali (PW-2) have relied upon the sale deed dated 31.1.1992, whereby two biswas of land was sold for Rs.40,000/- in Patti Bajaura. He has proved that the acquired land is just at a distance of 200 yards from the land under sale transaction and the fertility and utility of the both the lands is identical. It has a potential of being developed into a commercial area.

In RFAs No. 74 of 2002 and 60 of 2002, this Court has taken a similar view, wherein the land was acquired for the said public purpose and the compensation was awarded on the similar terms, this Court dismissed the appeal filed by the appellants, accepting the award passed by the District Judge.

For all the aforesaid reasons, I find no irregularity, illegality or perversity in the impugned award. The Court below has rightly exercised the jurisdiction vested in him. The appeals are accordingly dismissed.

(Sanjay Karol),
Judge

August 22, 2007
(rana)